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**SOAH DOCKET NO. 473-19-1265  
PUC DOCKET NO. 48785**

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**JOINT APPLICATION OF ONCOR  
ELECTRIC DELIVERY COMPANY,  
LLC AND AEP TEXAS, INC. TO  
AMEND CERTIFICATES OF  
CONVENIENCE AND NECESSITY  
FOR A DOUBLE CIRCUIT 345-KV  
TRANSMISSION LINE IN PECOS,  
REEVES, AND WARD COUNTIES,  
TEXAS (SAND LAKE – SOLSTICE  
CCN)**

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**BEFORE THE STATE OFFICE**

**OF**

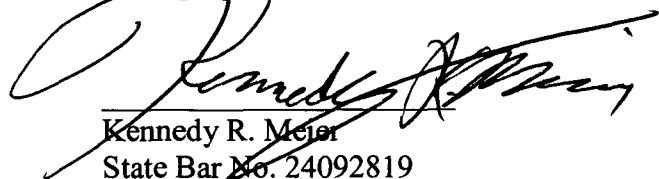
**ADMINISTRATIVE HEARINGS**

**COMMISSION STAFF'S REPLY BRIEF**

Respectfully Submitted,  
**PUBLIC UTILITY COMMISSION OF  
TEXAS LEGAL DIVISION**

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**DATE: MARCH 12, 2019**

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**SOAH DOCKET NO. 473-19-1265  
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<b>JOINT APPLICATION OF ONCOR ELECTRIC DELIVERY COMPANY, LLC AND AEP TEXAS, INC. TO AMEND CERTIFICATES OF CONVENIENCE AND NECESSITY FOR A DOUBLE CIRCUIT 345-KV TRANSMISSION LINE IN PECOS, REEVES, AND WARD COUNTIES, TEXAS (SAND LAKE – SOLSTICE CCN)</b>	<b>§ § § § § § § § § §</b>	<b>BEFORE THE STATE OFFICE   OF   ADMINISTRATIVE HEARINGS</b>
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**COMMISSION STAFF’S REPLY BRIEF**

**I INTRODUCTION**

**A. Introduction**

Staff (Staff) of the Public Utility Commission of Texas (Commission) continues to recommend Route 41 as the best option of the routes proposed for the transmission line,<sup>1</sup> as it best satisfies the requirements of PURA<sup>2</sup> and the Commission’s substantive rules.<sup>3</sup> Oncor Electric Delivery Company LLC (Oncor) and AEP Texas Inc. (AEP) (collectively, Applicants); Staff; COG Operating LLC (Concho); Occidental Permian Ltd., Oxy Delaware Basin, LLC, Oxy USA, Inc., Oxy USA WTP LP, Houndstooth Resources, LLC, and Occidental West Texas Overthrust, Inc. (collectively, Oxy); Forrister Generation-Skipping Trust and Alan Zeman; Plains Marketing, L.P. and Plains Pipeline, L.P. (collectively, Plains Pipeline) filed initial post-hearing briefs in this proceeding. Staff herein responds to certain arguments made by these parties in their initial briefs.

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<sup>1</sup> Direct Testimony of David Bautista, PUC Staff (Staff) Ex. 2 at 11:6-7, 18:6-9.

<sup>2</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001–66.016 (PURA).

<sup>3</sup> 16 Tex. Admin. Code §§ 25.101(b)(3)(B)(i)-(iv) (TAC).

## **B. Summary**

Specifically, Staff responds to arguments relating to the relative costs of the commonly supported routes and arguments regarding habitable structures. Staff also provides revisions to Oncor and AEP's proposed findings of fact, conclusions of law, and ordering paragraphs.<sup>4</sup> Staff asserts that Route 41 remains the best option considering the relative costs of the commonly supported routes, the number of habitable structures affected, and other factors discussed in greater detail in Staff's Initial Brief.

### **1. Route 41 exhibits positive quantitative features.**

Not addressed.

### **2. Route 41 exhibits positive qualitative features.**

Not addressed.

## **II. JURISDICTION AND NOTICE**

Not addressed.

## **III. EVALUATION OF PROPOSED ROUTES**

### **A. Routing Criteria Pursuant to PURA § 37.056(c)(4)**

Not addressed.

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<sup>4</sup> Oncor Electric Delivery Company LLC's and AEP Texas Inc.'s Joint Post-Hearing Brief Regarding the Sand Lake – Solstice Project at 27-49. (Oncor/AEP's Initial Brief).

## **B. Routing Criteria under 16 TAC § 25.101(b)(3)(B)**

### **1. Engineering Constraints**

Not addressed.

### **2. Cost**

Out of the commonly supported routes, Route 41 is the second least expensive route and, overall, best meets the criteria in PURA § 37.056 and 16 Texas Administrative Code (TAC) § 25.101.<sup>5</sup> The cost differences result largely from differences in route length, which the table below summarizes:<sup>6</sup>

	<u><b>Route 41</b></u>	<u><b>Route 41 modified</b></u>	<u><b>Route 320</b></u>	<u><b>Route 320 modified</b></u>	<u><b>Route 325 modified</b></u>
<b>Length of Route (miles)</b>	45.7	47.5	44.5	46.3	54

Applicants' recommended route, Route 320, is the least expensive and shortest route, but impacts a larger number of habitable structures, an issue discussed in greater detail below.<sup>7</sup> The following table summarizes the costs of the routes in comparison to Staff's recommended route, Route 41:<sup>8</sup>

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<sup>5</sup> Staff Ex. 2 at 11:6-7; 18:6-9.

<sup>6</sup> Application, Oncor/AEP Ex. 1, Attachment 1, Appendix E; Rebuttal Testimony of Russell J. Marusak, Oncor/AEP Ex. 11 at Exhibit RJM-R-7. *See also* Direct Testimony of Wilson P. Peppard, Oncor/AEP Ex. 6 at 8.

<sup>7</sup> Plains Pipeline's initial brief and its focus on cost largely centered on the difference between Route 320 (links B2-B3) and Route 41 (links B1-C3). Staff appreciates that there is a cost difference between these two options, though the balance in this instance swings towards the 35 fewer habitable structures affected by Route 41.

<sup>8</sup> *See* Oncor/AEP Ex. 1, Attachment 3; Rebuttal Testimony of Wilson P. Peppard, Oncor/AEP Ex. 12 at 12.

	<u><b>Route 41</b></u>	<u><b>Route 41 modified</b></u>	<u><b>Route 320</b></u>	<u><b>Route 320 modified</b></u>	<u><b>Route 325 modified</b></u>
<b>Cost (in millions)</b>	\$127.5	\$129.0	\$125.9	\$127.4	\$144.9
<b>Percentage increase/(decrease) in cost compared to Route 41</b>	0%	1.2%	(1.3)%	(0.1)%	13.6%

While Applicants continued to support Route 320, intervenors Oxy and Concho argued for Route 325 modified, which is not only 13.6% more expensive than Staff's recommendation, it is 15.1% more expensive than Applicants' supported route, Route 320.<sup>9</sup> Concho alleged that "[t]he public benefit outweighs the increased cost,"<sup>10</sup> but a difference of over \$17 million (comparing Route 325 modified to Route 41) or roughly \$19 million (comparing Route 325 modified to Route 320)<sup>11</sup> is a substantial burden to place on ratepayers. Oxy and Concho also pointed out that Routes 320 and 41 require running the transmission line through an area of dense oil and gas development, and argued that this could increase costs due to expenses caused by unanticipated engineering constraints and the need to condemn wells and property.<sup>12</sup> This sort of speculation does not provide dispositive guidance on route selection, as Route 325 modified will also pass through areas containing oil and gas development.<sup>13</sup> In addition, the Applicants testified that there are no identified engineering constraints they could not resolve,<sup>14</sup> and selecting Route 325 modified will result in known, significant cost differences being passed onto the public.

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<sup>9</sup> See *id.*

<sup>10</sup> Initial Post-Hearing Brief and Appendix of Intervenor COG Operating LLC at 10. (Concho's Initial Brief).

<sup>11</sup> See Oncor/AEP Ex. 1 at Attachment 3; Oncor/AEP Ex. 12 at 12.

<sup>12</sup> Occidental Permian Ltd., Oxy Delaware Basin, LLC, Oxy USA Inc., Oxy USA WTP LP, Houndstooth Resources, LLC, and Occidental West Texas Overthrust, Inc.'s Initial Brief at 11 (Oxy's Initial Brief); Concho's Initial Brief at 17-18.

<sup>13</sup> See Oxy's Initial Brief at 10.

<sup>14</sup> Oncor/AEP Ex. 12 at 11-12.

### 3. Moderation of Impact of Affected Community and Landowners

Not addressed.

### 4. Use of Compatible Rights-of-Way, Paralleling Existing Rights-of-Way

Not addressed.

### 5. Prudent Avoidance

Much of the discussion of prudent avoidance in the initial briefs centered on the number and nature of the habitable structures impacted by the commonly supported routes.<sup>15</sup> As detailed in the following table, Route 41 impacts significantly fewer habitable structures than the other commonly supported routes:<sup>16</sup>

	<u>Route 41</u>	<u>Route 41 modified</u>	<u>Route 320</u>	<u>Route 320 modified</u>	<u>Route 325 modified</u>
<b>Habitable Structures within 500 feet of route centerline</b>	3	3	38	38	37

Oncor, AEP, Oxy, Concho, and Plains Pipeline all argued that the prudent avoidance analysis is more nuanced than simply enumerating habitable structures and that the Commission should take the nature of those structures into account.<sup>17</sup> These parties pointed out that the vast majority of the habitable structures affected by Routes 320 and 325 modified are temporary “man camps” composed of mobile living units used by workers employed by the vibrant oil and gas

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<sup>15</sup> See Initial Brief of Plains Marketing, L.P. and Plains Pipeline, L.P. at 10-14 (Plains Pipeline’s Initial Brief); Oxy’s Initial Brief at 13; Concho’s Initial Brief at 20-21; Oncor/AEP’s Initial Brief at 3-4, 21-22.

<sup>16</sup> Direct Testimony of Brenda J. Perkins, Oncor/AEP Ex. 7 at Exhibit BJP-5; Oncor/AEP Ex. 11 at Exhibit RJM-R-7.

<sup>17</sup> See Concho’s Initial Brief at 20-21; Oxy’s Initial Brief at 13; Plains Pipeline’s Initial Brief at 10-13; Oncor/AEP’s Initial Brief at 21-22.



development activity in the study area.<sup>18</sup> The parties also argued that those man camps move frequently and with little warning, and might not even still be there today.<sup>19</sup>

While Staff does not dispute the mobile, transient nature of the habitable structures that comprise man camps, Staff does point out that it is pure speculation to make any assumptions about how long those structures will remain in place. Those habitable structures were in place when Oncor and AEP surveyed the route, and no party has introduced updated information into the evidentiary record that shows that those habitable structures are no longer present. Given the robust oil and gas development activity in the study area, those man camps could just as easily double in size or relocate closer to the route centerline before Oncor and AEP are able to begin construction.<sup>20</sup> Speculation about what may or may not happen to a habitable structure in the future is not a valid basis for a Commission decision on how to route a transmission line.

In addition, Staff notes that the definition of the term *habitable structure* in the Commission's rules explicitly includes mobile homes,<sup>21</sup> and the Commission's rules provide no basis for unequal treatment of habitable structures based on the type of habitable structure.<sup>22</sup> Under the rule, a habitable structure is a habitable structure and must be considered as such, regardless of whether it is a nursing home, an industrial facility, or part of a man camp.<sup>23</sup> While the parties are correct that an analysis of prudent avoidance involves more than merely counting affected habitable structures, the Commission's rules require consideration of all habitable structures, regardless of the characteristics of the structures or speculation regarding what may or may not happen to those structures in the near future.<sup>24</sup> As a result, Routes 320 and 325 modified should

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<sup>18</sup> See Plains Pipeline's Initial Brief at 11.

<sup>19</sup> See Oncor/AEP's Initial Brief at 21; Plains Pipeline's Initial Brief at 12.

<sup>20</sup> See Plains Pipeline's Initial Brief at 11 (describing the prominence of the oil and gas industry in the study area).

<sup>21</sup> 16 TAC § 25.101(a)(3).

<sup>22</sup> See generally 16 TAC § 25.101.

<sup>23</sup> 16 TAC § 25.101(a)(3).

<sup>24</sup> See generally 16 TAC § 25.101.

be evaluated as routes that impact 37 or 38 habitable structures, not as routes that impact five or six habitable structures.<sup>25</sup>

#### IV. ISSUES TO BE ADDRESSED IN THE COMMISSION'S PRELIMINARY ORDER

Not addressed.

#### V. PROPOSED FINDINGS OF FACT

Oncor and AEP included proposed findings of fact in their initial brief.<sup>26</sup> Staff proposes revisions to Oncor and AEP's findings of fact as follows:

30. The Application included 28 geographically diverse routes, which are an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation. Of these routes, Staff identified Route 41 as the route that best meets the requirements of PURA and the Commission's substantive rules.~~one route that Applicants believe best meets the requirements of PURA and the Commission's rules (route 320) in addition to 28 other reasonable, feasible alternative routes, which the Applicants and Halff identified from among 408 preliminary alternative routes Halff developed in its EA filed with the Application.~~
33. Route ~~41320~~ is approximately 45.7445 miles in length and is the third shortest alternative route.
35. Route ~~41320~~ is the second least expensive alternative route and is \$27,085,000~~\$28,683,000~~ less expensive than the most expensive alternative route.
37. ~~Staff~~Applicants identified route ~~41320~~ as the route that best addresses the Commission's routing criteria.
92. Route ~~41320~~ is estimated to cost \$99,818,000~~\$98,220,000~~, excluding station costs, which is the second least expensive of the alternative routes and

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<sup>25</sup> See Oxy's Initial Brief at 13.

<sup>26</sup> Oncor/AEP's Initial Brief at 27-45.

~~\$27,085,000~~~~\$28,683,000~~ less than the most expensive alternative route filed with the Application.

97. Route ~~41~~ ~~has three~~~~320~~ has 38 habitable structures within 500 feet of the centerline, ~~of which 34 are mobile living or office units that are temporarily in place and appear to have no permanent foundations or permanent utilities in place.~~
98. All of the alternative routes presented in the Application, including route ~~41~~~~320~~, conform to the Commission's policy of prudent avoidance in that they reflect reasonable investments of money and effort in order to limit exposure to electric and magnetic fields.
104. Route ~~41~~~~320~~ is parallel to existing compatible corridors, including existing transmission lines, public roads and highways, railroads, and apparent property boundaries, for approximately ~~26.6%~~~~27.2%~~ of its length.
107. With the exception of routes 370 and 404, no known commercial AM radio transmitter was identified within 10,000 feet of the centerline of the alternative routes, including route ~~41~~~~320~~.
109. There are no FM, microwave, and other electronic installations located within 2,000 feet of the centerline of route ~~41~~~~320~~.
112. There are no FAA-registered airports with at least one runway more than 3,200 feet in length within 20,000 feet of the centerline of route ~~41~~~~320~~.
116. With the exception of routes 370 and 404, none of the alternative routes, including route ~~41~~~~320~~, impact any agricultural cropland with mobile irrigation systems.
117. None of the alternative routes, including route ~~41~~~~320~~, directly cross any park or recreational areas.
118. No parks or recreational areas are located within 1,000 feet of the centerline of any of the alternative routes, including route ~~41~~~~320~~.
119. No significant impacts to the use of parks or recreation facilities located within the study area are anticipated from any of the alternative routes, including route ~~41~~~~320~~.
121. Route ~~41~~~~320~~ does not cross any previously recorded cultural resource site.
122. No significant impacts to historical and archaeological values are anticipated from any of the alternative routes, including route ~~41~~~~320~~.

124. Route ~~41320~~ has 20,298 feet within the foreground visual zone of U.S. and state highways.

## **VI. PROPOSED CONCLUSIONS OF LAW**

Oncor and AEP included proposed conclusions of law in their initial brief.<sup>27</sup> Staff proposes revisions to Oncor and AEP's conclusions of law as follows:

9. The Sand Lake to Solstice transmission line project using route ~~41320~~ is necessary for the service, accommodation, convenience, or safety of the public within the meaning of PURA § 37.056.
15. Route ~~41320~~ complies with PURA § 37.056(c)(4) and 16 TAC § 25.101, including the Commission's policy of prudent avoidance, to the extent reasonable to moderate the impact on the affected community and landowners.

## **VII. PROPOSED ORDERING PARAGRAPHS**

Oncor and AEP included proposed ordering paragraphs in their initial brief.<sup>28</sup> Staff proposes revisions to Oncor and AEP's ordering paragraphs as follows:

1. The Commission approves the construction and operation of the Sand Lake to Solstice Project as specified in this Order on route ~~41320~~, comprised of the following segments: A-B~~12~~-~~C~~B3-C2-D2-F3-G4-G51-I2-J1-J7-L1-Z.
2. The Commission approves Oncor's and AEP Texas's application to build a new double-circuit 345-kV transmission line extending from Oncor's Sand Lake Switch in Ward County to AEP Texas's Solstice Switch in Pecos County. The approved route for the transmission facilities is route ~~41320~~ as described in the EA.

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<sup>27</sup> *Id.* at 45-46.

<sup>28</sup> *Id.* at 46-49.

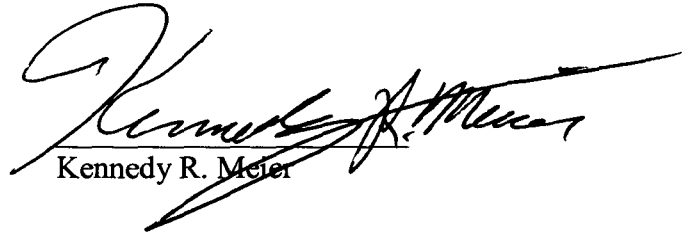
## **VIII. CONCLUSION**

Based on the discussion above, Staff continues to recommend that the adoption of Route 41 best meets the factors contained in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B) for the reasons stated in this brief and its Initial Brief.

**DOCKET NO. 473-19-1265**  
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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on this the 12<sup>th</sup> of March, 2019 in accordance with 16 TAC § 22.74.



Kennedy R. Meier